

**FILED**

UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

APR 01 2024

MICHELL R. ELFERS  
CLERK

**UNITED STATES DISTRICT COURT**

for the

District of New Mexico

ROGER S. SAUL,  
4504 Skyline Ct NE  
Albuquerque  
New Mexico 87111-3039  
505-275-9713  
rogersaul007@gmail.com

Plaintiff, pro se

v.

BEN THOMAS  
PO 1834  
Belen New Mexico 87002  
greenerman2012@yahoo.com

Defendant

**PETITION FOR RESTITUTION (UNLAWFUL DETAINER)**

**BASIS FOR JURISDICTION**

Jurisdiction in United States District Court is proper.

The amount in controversy exceeds \$75,000 (certainly including the value of house, double lot, and cost of required cleanup).

## STATEMENT OF CLAIM

1 Plaintiff claims restitution of the property at 1024 West Gilbert Avenue, Belen New Mexico 87002.

2 Defendants have caused intentional or reckless damage to the Property exceeding \$1,000 by accumulating debris, refuse, and a semi truck-trailer.

Exhibits 1,2

3 "Second Final Notice of Violation" November 8, 2016

*"No person shall permit the accumulation of debris, refuse, rubbish, or garbage, trash, or other similar material to accumulate on any portion of their property when said accumulation constitutes a detriment to the public health and a fire hazard to the community"* Title 8, Chapter 12, Section 080(B)

Exhibit 3

4 Defendants have falsified statements to City of Belen, Code

Enforcement Officer. February 18, 2019 8:40 AM

Exhibit 4

5. Plaintiff served Defendant on March 7, 2024. with

*"Three Day Notice of Substantial Violation of Rental Agreement"*

(intentional or reckless damage to property in excess of one thousand dollars \$1,000)". 4-901A Section 47-8-33 NMSA 1978

Exhibit 5.1, 5.2

## RELIEF

6 Plaintiff asks the court to order restitution to Plaintiff of the property at 1024 West Gilbert Ave, Belen New Mexico 87002.

7 The wrongs alleged are continuing at the present time, and do not appear likely to be corrected – indeed worsened with added semi-trailer.

8       "...dry wood and debris which has a potential for a big fire". Exhibit 3

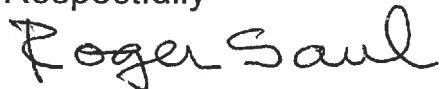
9       Defendant has refused access to worker cleanup crews.

10      Plaintiff asks the court to order restitution of the property.

### **CERTIFICATION AND CLOSING**

Under Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a non frivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support, or if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

Respectfully



Roger Saul  
4504 Skyline Ct NE  
Albuquerque  
New Mexico 87111-3039  
(505)-275-9713  
[rogersaul007@gmail.com](mailto:rogersaul007@gmail.com)



1024 West Gilbert Ave., Belen NM 87002

EXHIBIT

2



1024 West Gilbert Ave., Belen NM 87002

SECOND/FINAL NOTICE OF ORDINANCE  
VIOLATION

"Big fire...dry wood"

"Something the City takes very seriously"

EXHIBIT

tabbles

3

NOVEMBER 8, 2016.

THOMAS M SCRIP  
13140 BUCKSTONE RD NE  
ALBUQUERQUE, NM 87111

RE: Property located at 1024 Gilbert AVE, BELEN NM 87002

Legal Description: Subd: GILBERT ADDITION Lot: 12 THRU 15 Block: 6 0.29 ACRE MAP 100

Dear Mr. Scrip,

I drove by this property earlier this week to see if any progress. He did manage to move a couple of piles of debris, but as you can see on the pictures the back yard is full of dry wood and debris which has a potential for a big fire. While I was there a female came out of the travel trailer he has parked in his back yard. I also addressed this with him and told him that this was an ordinance violation and something the city takes very seriously. I regret to inform you that if these code violations with the debris and dried wood are not abated. I will be forced to take this to court and have no choice but to include you in the citation, because you are the owner of the property. I am going to give your tenant two more weeks to abate code violations. See below date. Please call me so we can work out a time line on abatement of code violations. Thank you.

The Code Enforcement Department performs regular inspections of your community. On behalf of the City of Belen, I would like to make you aware of the violation referenced below that was noticed in my last inspection. (SEE PHOTO'S).

While it is neither the intention nor the desire of the City to cause residents expense or inconvenience, it is the responsibility of the Code Enforcement Department to enforce the City of Belen Municipal Code for the benefit of all property owners and residents. Therefore, I am asking your cooperation in correcting the violation.

Should you have any questions regarding this matter, please contact Dwayne Pena at 505-966-2689. You can find a copy of the City of Belen Municipal Code at:

If this violation has already been corrected, please accept our thanks and disregard this notice.

**Title 8, Chapter 12, Section 080(B):** no person shall permit the accumulation of debris, refuse, rubbish, or garbage, trash or other similar material to accumulate on any portion of their property when said accumulation constitutes a detriment to the public health and a fire hazard to the community.

EXHIBIT

4

S

Mon, Feb 18,  
2019, 8:40 AM

Steven Gonzales  
[Steven.Gonzales@belen-nm.gov](mailto:Steven.Gonzales@belen-nm.gov)

[greenermail.2012@yahoo.com](mailto:greenermail.2012@yahoo.com)

Ben,

**The statements you have made to Mr. Saul are *false*.** I have never denied you anything. I did however tell you that I did not have a list. The ENTIRE yard is the "list". **Please do not *falsify* any of our interactions.** I do have plenty of pictures of the property and the wood pile is the least of my worries.

I will be by today to inspect your progress.

Best regards,

**Steven Gonzales**

**Code Enforcement Officer**

**505-966-2689 Office**

**505-916-7911 Cell**

**[Steven.gonzales@belen-nm.gov](mailto:Steven.gonzales@belen-nm.gov)**

**CITY OF BELEN**

100 SOUTH MAIN STREET

BELEN, NEW MEXICO 87002-3636

**4-901A. Three (3)-day notice of substantial violation of rental agreement (*Uniform Owner-Resident Relations Act*).**

[Section 47-8-33 NMSA 1978]

**EXHIBIT**

**5-1**

**THREE (3)-DAY NOTICE OF SUBSTANTIAL VIOLATION  
OF RENTAL AGREEMENT**  
*(Uniform Owner-Resident Relations Act)*

To:

Ben THOMAS  
and all other occupants

Address:

PO BOX 1934  
Belen

Unit:

New Mexico 37002

You are notified that you, or someone with your consent, has substantially violated the rental agreement or separate agreement about the premises at:<sup>1</sup>

1024 W. 4th Street  
Belen, New Mexico 47002  
in that on or about 2012-2021 (date), you, or someone with your consent,  
did the following:

intentional damage to property > \$1,000.00  
reckless

This conduct occurred on or within three hundred (300) feet of the premises and includes (check all that apply):

- possession, use, sale, distribution, or manufacture of a controlled substance, other than misdemeanor possession and use;
- unlawful use of a deadly weapon;
- unlawful action causing serious physical harm to another person;
- sexual assault or sexual molestation of another person;
- entry into the dwelling unit or vehicle of another person without that person's permission and with intent to commit theft or assault;
- theft or attempted theft of the property of another person by use or threatened use of force; or
- intentional or reckless damage to property in excess of one thousand dollars (\$1,000.00).

As a result of this conduct, the owner of the premises may terminate the rental agreement three (3) days from the date of service set out below.

You cannot be evicted from your home without a court order. This notice does not mean that you must leave your home without the opportunity to first go to court to challenge the owner's termination of the rental agreement.

The owner may file in court to evict you for a substantial violation of the rental agreement. You have the right to challenge the termination of the rental agreement by going to the court hearing to respond to the owner's claims and tell your side of the story. If you do not go

to the court hearing, the court may enter a judgment against you and issue a court order evicting you from your home.

Dated this 7 day of March.

Saul Novak, Jr.

(Owner) (Agent)

Service of notice:<sup>2</sup>

- personally delivered to resident
- posted and mailed certified mail, return receipt requested
- mailed by certified mail, return receipt requested

[ ] Delivered [ ] Posted:

Time: NOON

Date: 3-7-24

By:<sup>3</sup> Saul Novak, Jr.

[ ] Mailed:

Time: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_



USE NOTES

1. If the leased premises is an apartment, include the name of the apartments and the apartment number. This form may also be used for a mobile home park with less than twelve (12) units. See NMSA 1978, § 47-10-2(C) (1997).

2. If this notice is personally delivered to the resident, mailing or posting is not required. If posted, mailing by certified mail is also required by this form. A posted notice must be affixed to a door by taping all sides or placing it in a fixture or receptacle designed for notices. See NMSA 1978, § 47-8-13(D) (1995).

The party giving notice should retain two (2) copies for possible court action.

3. Set forth the name of the person delivering, posting, or mailing the notice.  
 [Adopted, effective September 2, 1997; as amended, effective October 15, 1999; as amended by Supreme Court Order No. 20-8300-018, effective December 31, 2020.]

# Photo Document Mailer



Do not fold or bend

